

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
New Visalia Broadcasting, Inc.)	
)	
Former licensee of Station DKSLK(FM))	File No. BRH-20130730APH
Visalia, California)	Facility ID No. 48657

MEMORANDUM OPINION AND ORDER

Adopted: August 1, 2014

Released: August 4, 2014

By the Commission:

1. The Commission has before it a “Petition for Reconsideration / Review of Staff Action” (“AFR”) filed by New Visalia Broadcasting, Inc. (“New Visalia”), on May 21, 2014. In the AFR, New Visalia seeks Commission review of the Media Bureau (“Bureau”) decision¹ that denied New Visalia’s Petition for Reconsideration (“Petition”), which sought reinstatement of its license for Station DKSLK(FM), Visalia, California (“Station”).² The Bureau’s initial decision held that the Station’s license had automatically expired pursuant to Section 312(g) of the Communications Act of the 1934, as amended,³ because the Station failed to broadcast during a consecutive 12 month period.⁴ In the AFR, New Visalia argues that: 1) the Bureau failed to issue an Order to Show Cause prior to finding that the Station’s license had expired; and 2) the Bureau should have exercised its discretion under Section 312(g) to reinstate the Station’s license.⁵

2. The AFR’s title alternatively requests reconsideration or review of the *Staff Decision*, and the first sentence of the AFR cites Section 1.106 of the Commission’s rules (the “Rules”), which involves petitions for reconsideration rather than applications for review.⁶ However, the Bureau had previously

¹ *Letter to Larry Perry from Peter H. Doyle*, Ref. 1800B3-ATS (MB Apr. 21, 2014) (“*Staff Decision*”). See also *Broadcast Applications*, Public Notice, Report No. 28225 (MB Apr. 24, 2014).

² Petition for Reinstatement of License of New Visalia Broadcasting, Inc. (Nov. 29, 2013).

³ 47 U.S.C. § 312(g).

⁴ See *Letter to New Visalia from Peter H. Doyle*, Ref. 1800B3-DW (MB Oct. 24, 2013) (“*Expiration Letter*”). See also *Broadcast Actions*, Public Notice, Report No. 48105 (MB Oct. 30, 2013). The *Expiration Letter* noted that the Station had been silent since April 5, 2012, had not resumed operations until July 25, 2013, and had resumed operations with unauthorized facilities. See *Expiration Letter* at 1-2. Therefore, the Bureau determined that the Station’s license had automatically expired on April 5, 2013, and dismissed the captioned license renewal application. *Id.* at 2.

⁵ New Visalia requested reinstatement of its license based on the “equity and fairness” provision of Section 312(g), arguing that the Station’s silence was due to the health of the New Visalia’s owners, Robert and Sharryle Eurich. The Bureau denied the request for reinstatement because: a) there was no precedent to reinstate a license under that provision based on the health of a licensee’s principals; b) the Station continued operating for five months after Mr. Eurich’s first operation; c) New Visalia, in its requests for authority to remain silent, had never indicated that Mr. or Mrs. Eurich’s health was the cause of the Station’s silence, but had instead consistently indicated that the silence was due to the loss of its tower site; and d) when the Station did resume operations, it did so with unauthorized facilities. *Staff Decision* at 3-4.

⁶ See 47 C.F.R. § 1.106; compare 47 C.F.R. § 1.115.

denied reconsideration in the *Staff Decision*, and therefore a second petition for reconsideration would be subject to dismissal, as repetitious, pursuant to Section 1.106(k)(3) of the Rules.⁷ Furthermore, the first sentence of the AFR states that New Visalia “respectfully requests that the full Commission reconsider the action of the staff” in the *Staff Decision*.⁸ Accordingly, we will treat the AFR as an application for review of the *Staff Decision* pursuant to Section 1.115 of the Rules.⁹

3. Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Rules bar applications for review that rely “on questions of fact or law upon which the [designated authority issuing the decision] has been afforded no opportunity to pass.”¹⁰ New Visalia did not argue in the Petition that the Bureau was required to issue an Order to Show Cause prior to finding that the Station’s license has expired. Accordingly, we will dismiss the AFR to the extent that it raises this new argument.¹¹ We also find that the Bureau correctly declined to use its discretion to reinstate the Station’s license. While New Visalia maintains that the station’s prolonged silence was caused by its principals’ health problems, the evidence in the record does not establish that either principal (let alone both principals) was incapacitated during the one-year period when the station was silent or that health problems prevented the principals from resuming operations during this period despite diligent efforts to do so.¹² Moreover, New Visalia did not attribute the station’s silence to these health problems until after it had been silent for more than a year.¹³ We will thus otherwise deny the AFR.

⁷ 47 C.F.R. § 1.106(k)(3). *See Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606-7 (2011).

⁸ AFR at 1; *see also* AFR at 9 (indicating that the full Commission can use this case to instruct the staff with respect to future cases with similar facts).

⁹ 47 C.F.R. § 1.115.

¹⁰ *See* 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c); *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1184 (D.C. Cir. 2003) (upholding Commission’s order dismissing arguments under Section 1.115(c) because that rule does not allow the Commission to grant an application for review if it relies upon arguments that were not presented below).

¹¹ Additionally, we note that Section 312(c) requires the Commission to issue an Order to Show Cause prior to revoking a license pursuant to Section 312(a), which it did not do here. 47 U.S.C. § 312(c). Section 312(g), on the other hand, provides for the automatic expiration of license, as occurred here, and does not require that the staff issue such an order. 47 U.S.C. § 312(g).

¹² According to a doctor’s letter, for example, one principal had been unable to work “full-time” for an unspecified period of time. *See* Petition for Reinstatement of License, Exhibit 1. But there is no evidence that he was unable to work at all. And with respect to the other principal, the letters submitted by two different doctors do not indicate that she was unable to work during the relevant one-year time period (April 2012-April 2013). *See* Petition for Reinstatement of License, Exhibits 2-3.

¹³ *See* note 5.

4. ACCORDINGLY, IT IS ORDERED that the Petition for Reconsideration/Review of Staff Action filed by New Visalia Broadcasting, Inc.: (1) IS DISMISSED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended, and Section 1.115(c) of the Commission's Rules,¹⁴ to the extent that it relies on questions of fact or law not previously presented to the Bureau; and (2) otherwise IS DENIED, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,¹⁵ and Section 1.115(g) of the Commission's Rules.¹⁶

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁴ 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c).

¹⁵ 47 U.S.C. § 155(c)(5).

¹⁶ 47 C.F.R. § 1.115(g).